



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: James C. Bateman Petroleum Services, Inc. dba
"SEMCO" -- Request for Reconsideration
File: B-228252.3
Date: November 19, 1987

DIGEST

1. The fact that the contracting officer did not declare the protester's bid nonresponsive at bid opening does not constitute waiver of the failure to include an adequate bid guarantee, and the government is not estopped from rejecting the bid.

2. The General Accounting Office will summarily dismiss a protest without benefit of an agency report, even where an agency report was requested at the outset of the proceedings, where the protest on its face fails to state a valid basis for protest.

DECISION

James C. Bateman Petroleum Services, Inc. dba "SEMCO" requests reconsideration of our decision in James C. Bateman Petroleum Services, Inc. dba "SEMCO", B-228252, Oct. 5, 1987, 87-2 C.P.D. ¶ ____, in which we dismissed SEMCO's protest under solicitation No. DLA005-87-B-0017, issued by the Defense Logistics Agency, Defense Depot-Tracy, Tracy, California.

SEMCO protested the rejection of its bid as nonresponsive because of its claim that the uncertified check it included with its bid as a bid guarantee was provided on the basis of oral advice from the contracting officer that such a check was acceptable. We dismissed SEMCO's protest because we found that: (1) an uncertified corporate check is not an adequate bid guarantee; (2) the failure of a bidder to present an adequate bid guarantee at the time of bid opening renders the bid nonresponsive; and (3) since a contracting officer does not have blanket discretion to waive inadequate bid guarantees, a bidder's reliance on alleged oral advice does not bind the government.

The basic substance of SEMCO's request for reconsideration is its reliance on the contracting officer's alleged statement at bid opening that the uncertified corporate

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check submitted by SEMCO was an acceptable bid guarantee. Our previous decision addressed the issue of the alleged oral advice given before bid opening. We stated that such advice does not bind the government and bidders rely on such advice at their own risk. See Environmental Asceptic Services Administration, B-221316, Mar. 18, 1986, 86-1, C.P.D. ¶ 268. The same is true of advice allegedly given after bid opening, since the legal effect is the same--a contracting officer simply does not have the discretion to waive an inadequate bid guarantee. The fact the contracting officer did not declare SEMCO's bid nonresponsive at bid opening does not constitute a waiver of the bid's defect or estop the government from rejecting the bid. See Main Electric Ltd., B-224026.2, Apr. 10, 1987, 87-1 C.P.D. ¶ 394.

The protester also argues in its request for reconsideration that the issuance of our decision prior to receipt of an agency report and the protester's comments was prejudicial and in violation of its rights. However, upon close examination of the protest, we determined that there was no legal basis for the protest. Thus, an agency report would not have provided information that would have changed the outcome of our decision. Moreover, our Bid Protest Regulations clearly provide for summary dismissal of a protest that on its face does not state a valid basis for protest, even if we requested an agency report at the outset of the proceedings. 4 C.F.R. § 21.3(e) (1987).

While the request for reconsideration otherwise clearly reflects SEMCO's disagreement with our decision, it does not meet the requirement of a statement of factual and legal grounds warranting reversal or modification, 4 C.F.R. § 21.12(a), and thus does not provide us with any basis upon which to modify our prior decision.

The prior decision is affirmed.



for James F. Hinchman
General Counsel